IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 422 of 2007
Date of Decision: 19.3.2007

Pala Singh ...Appellant

Versus

Yug Raj and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri S.S. Salar, Advocate, for the appellant.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby suit filed by the plaintiffs for declaration and for joint possession as the legal heirs of deceased Pritam Singh was decreed.

The deceased-Pritam Singh, father of the respondents, died on 5.12.1993. Earlier on 1.10.1994 his wife suffered a consent decree in respect of the estate of Pritam Singh in favour of defendant Pala Singh, the present appellant. On the basis of the aforesaid decree, mutation was also sanctioned. The plaintiffs challenged the said decree, inter-alia, on the ground that they are the legal heirs of the deceased and as such, the said decree is not binding qua their right, title or interest.

Though, the learned trial Court dismissed the suit, but the learned first Appellate Court found that the Will

dated 10.11.1993, relied upon by the defendant is not proved to be executed. It was found that the deceased Pritam Singh was 32 years of age and that there is no circumstance as to why the Will was executed at that age. It was found that the explanation that Pritam Singh has suffered a heart attack in the year 1988 remains unsubstantiated. The sufferance of the heart attack in the year 1988 can not be a ground for the execution of the Will in the year 1993. The Court has compared the signatures on the letters Exhibit P.6 to P.9 and returned a finding that even naked eyes show that the signatures on the Will are entirely different. The testimony of the attesting witnesses was found to be unreliable being discrepant in nature.

Learned counsel for the appellant has vehemently argued that the sufferance of the decree in favour of the present appellant by the wife of Pritam Singh itself is a proof of execution of the Will. However, the said argument is not tenable for the reason that the execution of the Will is required to be proved in terms of Section 68 of the Indian Evidence Act, 1872, read with Section 63 of the Succession Act, 1925. In the absence of proof of execution of the Will and that the Will is not surrounded by the suspicious circumstances, it cannot be said that the execution of the Will stands proved.

It may be noticed that the original Will was not produced by the appellant. The beneficiary under the Will is the wife, who has suffered a consent decree in favour of brother of her husband. The learned first Appellate Court has found that the decree suffered by the wife is binding on the wife to the extent of her share.

In the absence of proof of the execution of the Will, the decree passed by the learned first Appellate Court, cannot be said to be suffering from any illegality or irregularity, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

19-03-2007 (HEMANT GUPTA)
ds JUDGE